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**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

Jeff Corbett, an individual; John Jenkins, an individual; Scott Murray, an individual; and David Newton, an individual,

Plaintiffs,

vs.

Public Employees' Retirement System, ex rel. State of Nevada; Las Vegas Metropolitan Police Department, a political subdivision of the State of Nevada; and Does I-X, inclusive,

Defendants.

**CASE NO.: 2:20-cv-02149-KJD-NJK**

**JOINT MOTION TO EXTEND  
DISCOVERY DEADLINES**

**(THIRD REQUEST)**

Pursuant to LR 26-3 and LR IA 6-1, Plaintiffs and Defendant Las Vegas Metropolitan Police Department ("LVMPD") (collectively the "Parties"), acting through their respective counsel of record, respectfully submit this Motion to Amend Discovery Deadlines representing their third request to extend discovery deadlines.

**I. BACKGROUND**

Plaintiffs have asserted various causes of action claiming that LVMPD paid improper wages to the Plaintiffs and misclassified certain work hours performed by Plaintiffs, allegedly resulting in lower than lawful pension accounts in Plaintiffs' names with the Public Employees' Retirement System ("PERS"). Plaintiffs' direct claims asserted against PERS have been

1 dismissed. The Parties agree that the deadlines adopted by the Court should be revised to permit  
2 completion of further discovery needed for the Parties to prepare reasonably-comprehensive  
3 dispositive motions. The Parties seek an amended discovery cut-off date of December 28, 2021  
4 (a 60-day extension).

5 **II. DISCOVERY COMPLETED**

6 1. On January 4, 2021, Defendant LVMPD served its initial Disclosure of Witnesses  
7 and Documents, identifying approximately eight (8) potential witnesses and approximately 225  
8 pages of documents.

9 2. On January 12, 2021, Plaintiffs served their initial Disclosures of Witnesses and  
10 Documents, identifying approximately fifteen (15) potential witnesses and approximately 375  
11 pages of documents. In Plaintiffs' initial Disclosures of Witnesses and Documents, they  
12 identified seventeen (17) separate types of documents likely to be a) relevant, and b) within the  
13 custody and control of LVMPD. The point of this exercise was to prompt LVMPD to disclose  
14 such records. However, as mentioned below, counsel for LVMPD initially misinterpreted  
15 Plaintiffs' statements and first came to understand Plaintiffs' intentions during a meet-and-confer  
16 phone call on October 15, 2021.

17 3. On March 12, 2021, Plaintiffs sent to LVMPD their initial set of written discovery  
18 requests, consisting of nine (9) interrogatories and three (3) document production requests.

19 4. On April 12, 2021, Plaintiffs sent to LVMPD their second set of written discovery  
20 requests, consisting of four (4) admissions requests, eight (8) additional interrogatories, and four  
21 (4) additional document production requests.

22 5. On April 13, 2021, counsel for the Parties determined they had miscommunicated  
23 regarding the initial written discovery requests sent by Plaintiffs, so they agreed to treat that  
24 same date, April 13, 2021, as the service date for both sets of written discovery that had been  
25 served by Plaintiffs on LVMPD.

26 6. On May 4, 2021, LVMPD served its Responses to Plaintiffs' First Set of Requests  
27 for Admissions.  
28

1           7.       On May 5, 2021, counsel for the Parties discussed the status of LVMPD's  
2 responses to Plaintiffs' other written discovery requests then pending (Interrogatories and  
3 Requests for Production) at which time counsel for LVMPD requested additional time to  
4 complete the responses. Counsel for Plaintiffs approved the request.

5           8.       On May 25, 2021, LVMPD served its First Supplement to its Initial Disclosures  
6 of Witnesses and Documents.

7           9.       On July 1, 2021, Plaintiffs served their Second Set of Request for Admissions  
8 upon LVMPD.

9           10.      On July 1, 2021, LVMPD served its First Set of Requests for Production of  
10 Documents upon each of the four (4) Plaintiffs.

11          11.      On July 1, 2021, LVMPD served its First Set of Interrogatories upon each of the  
12 four (4) Plaintiffs.

13          12.      On July 22, 2021, LVMPD served its Answers to Plaintiffs' First Set of  
14 Interrogatories.

15          13.      On July 22, 2021, LVMPD served its Responses to Plaintiffs' First Set of  
16 Requests for Production of Documents, disclosing to Plaintiffs an additional 2,015 pages.

17          14.      On July 22, 2021, LVMPD served its Answers to Plaintiffs' Second Set of  
18 Requests for Admissions.

19          15.      On August 17, 2021, Plaintiffs served a subpoena on third-party Las Vegas Police  
20 Protective Association ("LVPPA") seeking records and information.

21          16.      On August 30, 2021, LVMPD served Supplemental Answers to Plaintiffs' First  
22 Set of Interrogatories.

23          17.      On September 2, 2021, LVPPA delivered the documents subpoenaed by  
24 Plaintiffs, which were then delivered to LVMPD on September 20, 2021.

25          18.      On September 20, 2021, Plaintiffs served their answers to LVMPD's First Set of  
26 Interrogatories.

1           19. On October 5, 2021, Plaintiffs served a subpoena on the Public Employees'  
2 Retirement System of Nevada ("PERS"), following its dismissal from this case. Based on  
3 communications with counsel for PERS, it is anticipated that PERS will respond to the subpoena  
4 on or before October 29, 2021.

5           20. On October 14, 2021, LVMPD served its Second Set of Requests for Production  
6 of Documents upon each of the Plaintiffs and inquired about responses from the Plaintiffs to  
7 LVMPD's First Set of Requests for Production of Documents, which were initially served in  
8 early July 2021.

9           21. On October 14-15, 2021, counsel for Plaintiffs confirmed that no responses to  
10 LVMPD's initial Requests for Production of Documents (RFPs) had been prepared and  
11 investigated the issue further. It was then that counsel for Plaintiffs learned that when forwarding  
12 LVMPD's initial discovery requests (RFPs and Interrogatories) to the Plaintiffs, only one of two  
13 intended files was attached. This led Plaintiffs' counsel to calendar a general due date for  
14 "responses to LVMPD's discovery requests" rather than specific references to both types of  
15 pending requests (RFPs and Interrogatories). As a result of these missteps, Plaintiffs responded  
16 to LVMPD's Interrogatories but did not prepare or serve responses to the RFPs. Again, this issue  
17 was first brought to the attention of counsel for Plaintiffs on October 14, 2021.

18           22. Intending to address these concerns, counsel for the parties communicated by  
19 telephone on October 15, 2021. During this call, it was determined that LVMPD had misread  
20 Plaintiffs' initial Disclosure of Documents and Witnesses which were intended to cause LVMPD  
21 to locate and disclose documents that Plaintiffs identified as being a) relevant, and b) in the  
22 custody and control of LVMPD. Counsel for the parties have since cooperated in a joint effort to  
23 file this Motion and promptly complete all pending discovery requests. Counsel for LVMPD  
24 agreed during the phone call to treat Plaintiff's initial Disclosures as Requests for Production of  
25 Documents, which the parties agreed to deem served on LVMPD on that same date, October 15,  
26 2021.

23. On October 14, 2012, LVMPD served Notices scheduling the depositions of each of the four (4) Plaintiffs for October 28 or 29, 2021.

24. On October 18, 2021, counsel for Plaintiffs determined (and communicated to counsel for LVMPD via email) that none of the depositions can proceed as scheduled because two (2) of the Plaintiffs reside outside of Nevada, one of the Nevada residents has travel plans for October 22-24 and 27-31, and the other Nevada resident has a surgery scheduled for October 27, 2021. Counsel for the parties are currently attempting to identify alternate means (videoconferencing) and/or dates to permit Plaintiffs' deposition testimony to be taken.

### **III. DISCOVERY REMAINING**

The Plaintiffs are presently working to disclose documents previously requested by LVMPD, about which they were first reminded on October 14, 2021. Similarly, counsel for LVMPD are presently working to disclose documents identified by Plaintiffs as likely to be relevant and within the control and custody of LVMPD.

The Parties will need to analyze their respective document disclosures, which are anticipated by mid-November, 2021, along with the records and information that they anticipate PERS will disclose pursuant to subpoena on or about October 29, 2021. The Parties will then need to work cooperatively to identify the witnesses from whom live deposition testimony will be sought, including both party representatives and possibly non-party fact witnesses.

Counsel for LVMPD has noticed the depositions of each of the Plaintiffs, but as stated above, the parties will be unable to complete the depositions on the dates initially selected by LVMPD. Plaintiffs reserve the right to conduct depositions within the discovery deadline set forth below. The parties are committed to cooperating to ensure that the remaining discovery is completed by the cut-off date proposed below, December 28, 2021.

### **IV. GOOD CAUSE FOR EXTENSION**

The Court should grant the Parties' Joint Motion to Extend Discovery. A motion to extend deadlines in a discovery plan made within 21 days of the subject deadline must be supported by a showing of "good cause" for the extension. Local Rule 26-3; *see also Johnson v.*

1 *Mammoth Recreations, Inc.*, 975 F.2d 604, 608-09 (9th Cir. 1992). Good cause to extend a  
2 discovery deadline exists “if it cannot reasonably be met despite the diligence of the party  
3 seeking the extension.” *Paws Up Ranch, LLC v. Green*, No. 2:12-cv-01547-GMN-NJK, 2013  
4 U.S. Dist. LEXIS 146149, at \*3 (D. Nev. Oct. 8, 2013) (quoting *Johnson*, 975 F.2d at 609). The  
5 Court has broad discretion in supervising the pretrial phase of litigation. *Id.* (citing *Zivkovic v. S.*  
6 *Cal. Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002)).

7 Here, the current discovery deadline is October 29, 2021, which is less than 21 days from  
8 the filing of this motion. However, this motion is being filed less than one week after the primary  
9 discovery issues addressed herein were first identified by either party. Immediately after the  
10 Plaintiffs received LVMPD’s First Set of Interrogatories and First Set of Requests for Production  
11 of Documents (RFPs), Plaintiffs’ counsel emailed the Plaintiffs directly to request their  
12 responses. Unfortunately, Plaintiffs’ counsel inadvertently sent the Interrogatories and another  
13 attachment, but not the RFPs. This led Plaintiffs to mistakenly believe they had responded to all  
14 of LVMPD’s discovery requests until LVMPD raised the issue on October 14, 2021.

15 In the Plaintiffs’ initial disclosures, the Plaintiffs attempted to identify various types of  
16 records they believed were relevant and under LVMPD’s exclusive control. LVMPD’s counsel  
17 misread Plaintiffs’ statements / requests and did not attempt to locate or provide responsive  
18 documents. This issue has since been resolved by the parties. LVMPD is currently working to  
19 produce the requested documents, which will then need to be reviewed by Plaintiffs’ counsel.

20 Despite these inadvertent oversights, both Parties have acted in good faith. They  
21 respectfully submit that although they have been “diligent” in conducting discovery, the current  
22 end of discovery deadline of October 29, 2021 cannot “reasonably be met.” Accordingly, the  
23 Parties are jointly requesting a third extension for discovery with a proposed deadline of  
24 December 28, 2021. The Parties are working cooperatively to resolve issues and produce all  
25 requested documents to each other. Having shown good cause, the Parties request that their  
26 motion be granted.

**V. REQUEST FOR EXTENDED DISCOVERY**

The Parties propose that the discovery period approved by the Court be extended by sixty (60) days to permit completion of fact discovery. The Parties propose that other deadlines be extended in a similar fashion, as follows:

<u>Description</u>	<u>Existing Date</u>	<u>Proposed Date</u>
Discovery Cut Off	October 29, 2021	December 28, 2021
Amend Pleadings and Add Parties	March 4, 2021	No Change - Expired
Initial Expert Disclosures	April 3, 2021	No Change - Expired
Rebuttal Expert Disclosures	May 3, 2021	No Change - Expired
Dispositive Motions	December 3, 2021	January 27, 2022
All Other Discovery Issues	To Be Determined	To Be Determined

This Motion to Extend Discovery Deadlines is not sought for any improper purpose or for the purpose of delay. Rather, the additional time requested in this Motion will enable the Parties to complete the discovery needed for the Parties to brief the Court in dispositive motions and to prepare this Case for trial. The Parties respectfully submit that the reasons set forth above constitute good cause for the extended deadlines they are requesting.

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DATED: October 19, 2021

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**NO FURTHER EXTENSIONS  
 WILL BE GRANTED.**

IT IS SO ORDERED.  
 Dated: October 20, 2021